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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
10/632,144	08/01/2003	Robert W. Lauer	086554-0975	1828
22428	7590	09/22/2004	EXAMINER	
FOLEY AND LARDNER SUITE 500 3000 K STREET NW WASHINGTON, DC 20007			PHAN, HAU VAN	
		ART UNIT		PAPER NUMBER
				3618

DATE MAILED: 09/22/2004

Please find below and/or attached an Office communication concerning this application or proceeding.

Office Action Summary	Application No.	Applicant(s)	
	10/632,144	LAUER, ROBERT W.	
	Examiner	Art Unit	
	Hau V Phan	3618	<i>MW</i>

-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --
Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If the period for reply specified above is less than thirty (30) days, a reply within the statutory minimum of thirty (30) days will be considered timely.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

Status

- 1) Responsive to communication(s) filed on 01 August 2003.
- 2a) This action is **FINAL**. 2b) This action is non-final.
- 3) Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

Disposition of Claims

- 4) Claim(s) 1-18 is/are pending in the application.
- 4a) Of the above claim(s) _____ is/are withdrawn from consideration.
- 5) Claim(s) _____ is/are allowed.
- 6) Claim(s) 1-8 and 11-18 is/are rejected.
- 7) Claim(s) 9 and 10 is/are objected to.
- 8) Claim(s) _____ are subject to restriction and/or election requirement.

Application Papers

- 9) The specification is objected to by the Examiner.
- 10) The drawing(s) filed on 01 August 2003 is/are: a) accepted or b) objected to by the Examiner.
Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).
Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).
- 11) The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

Priority under 35 U.S.C. § 119

- 12) Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
 - a) All
 - b) Some *
 - c) None of:
 1. Certified copies of the priority documents have been received.
 2. Certified copies of the priority documents have been received in Application No. _____.
 3. Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).
- * See the attached detailed Office action for a list of the certified copies not received.

Attachment(s)

- 1) Notice of References Cited (PTO-892)
- 2) Notice of Draftsperson's Patent Drawing Review (PTO-948)
- 3) Information Disclosure Statement(s) (PTO-1449 or PTO/SB/08)
Paper No(s)/Mail Date 8/1/2003.
- 4) Interview Summary (PTO-413)
Paper No(s)/Mail Date. _____.
- 5) Notice of Informal Patent Application (PTO-152)
- 6) Other: _____.

DETAILED ACTION

Information Disclosure Statement

1. The information disclosure statement (IDS) submitted on 8/1/2003 has been considered.

Drawings

2. The drawings are objected to under 37 CFR 1.83(a) because they fail to show "a throat 552" as described in the specification. Any structural detail that is essential for a proper understanding of the disclosed invention should be shown in the drawing. MPEP § 608.02(d). Corrected drawing sheets in compliance with 37 CFR 1.121(d) are required in reply to the Office action to avoid abandonment of the application. Any amended replacement drawing sheet should include all of the figures appearing on the immediate prior version of the sheet, even if only one figure is being amended. The figure or figure number of an amended drawing should not be labeled as "amended." If a drawing figure is to be canceled, the appropriate figure must be removed from the replacement sheet, and where necessary, the remaining figures must be renumbered and appropriate changes made to the brief description of the several views of the drawings for consistency. Additional replacement sheets may be necessary to show the renumbering of the remaining figures. The replacement sheet(s) should be labeled "Replacement Sheet" in the page header (as per 37 CFR 1.84(c)) so as not to obstruct any portion of the drawing figures. If the changes are not accepted by the examiner, the applicant will

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be notified and informed of any required corrective action in the next Office action. The objection to the drawings will not be held in abeyance.

Claim Rejections - 35 USC § 112

3. The following is a quotation of the second paragraph of 35 U.S.C. 112:

The specification shall conclude with one or more claims particularly pointing out and distinctly claiming the subject matter which the applicant regards as his invention.

4. Claims 17-18 are rejected under 35 U.S.C. 112, second paragraph, as being indefinite for failing to particularly point out and distinctly claim the subject matter which applicant regards as the invention.

Regarding claim 17, the phrase "a wheeled container for use, comprising:
providing a wheeled container" is not clear, how many wheeled container.

Regarding claim 5, the phrase "a center point an arc defined by the first slot is disposed above the first slot" is not clear, because the slot has an arc shaped and a center point of the arc shaped. It should be above the inboard end of the slot.

Claim Rejections - 35 USC § 102

5. The following is a quotation of the appropriate paragraphs of 35 U.S.C. 102 that form the basis for the rejections under this section made in this Office action:

A person shall be entitled to a patent unless –

(b) the invention was patented or described in a printed publication in this or a foreign country or in public use or on sale in this country, more than one year prior to the date of application for patent in the United States.

6. **Claims 1-8, 11-18 are rejected under 35 U.S.C. 102(b) as being anticipated by Mast et al. (5,743,542).**

Mast et al. in figures 1-3 and 6, disclose a wheeled container comprising an axle (52), a first wheel (46) connected to the axle, a container body (10) having a bottom portion (16) and a first slot (30) disposed in the bottom portion of the container body and that receives the axle. The first slot has an inboard end (32), in which the first wheel is positioned for nesting of the wheeled container in another container, and an outboard end (34), in which the first wheel is deployed for use, and space therebetween to permit movement of the axle along the first slot. The first slot is being configured to direct the axle toward the outboard end when the first wheel is placed on a ground surface.

Regarding claim 2, Mast et al. disclose the ends of each slot, which are substantially the same elevation above the bottom surface (col. 3, lines 21-24). With the term "substantially" can be recited the same, below or above. Therefore, the inboard end of the first slot is disposed below the outboard end of the first slot.

Regarding claim 3, Mast et al. disclose the first slot extends upwardly (downwardly and upwardly, see figure 6) from the inboard end to the outboard end.

Regarding claim 4, Mast et al. disclose the first slot having a substantially arcuate shape.

Regarding claim 5 as best understood, Mast et al. disclose a center point of an arc defined by the first slot, which is disposed above a lower portion of the first slot.

Regarding claims 6 and 18, Mast et al. disclose the first slot further comprising a retainer (36) adapted to retain the axle at the outboard end.

Regarding claim 7, Mast et al. disclose a predetermined external force must be applied to container body to position the axle in the retainer.

Regarding claim 8, Mast et al. disclose the retainer including a snap-fit member.

Regarding claim 11, Mast et al. disclose a second slot disposed in the bottom portion of the container body and that receives the axle, wherein the second slot has substantially the same configuration as the first slot.

Regarding claim 12, Mast et al. disclose the axle, which is disposed at the inboard end and the first wheel does not extend beyond a rear portion of the bottom portion of the container body.

Regarding claim 13, Mast et al. disclose when the axle, which is disposed at the outboard end, the first wheel extends beyond a rear portion of the bottom portion of the container body.

Regarding claim 14, Mast et al. disclose when the axle, which is disposed at the outboard end, a bottom of the first wheel is substantially level with a bottom surface of the container body.

Regarding claim 15, Mast et al. disclose a linear slot can be employed to limit the wheel assembly in backward and forward positions. Therefore, it could be a removable structure extending through the first slot between the axle and the outboard end of the first slot to prevent the axle from moving to the outboard end when the first wheel is placed on the ground surface.

Regarding claim 16, Mast et al. disclose a removable structure extends through the retainer to prevent the axle from being retained at the outboard end.

Allowable Subject Matter

7. Claims 9-10 are objected to as being dependent upon a rejected base claim, but would be allowable if rewritten in independent form including all of the limitations of the base claim and any intervening claims.

Conclusion

8. Any inquiry concerning this communication or earlier communications from the examiner should be directed to Hau V Phan whose telephone number is 703-308-2084. The examiner can normally be reached on 7:30AM-4:00PM.

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Christ Ellis can be reached on 703-308-2560. The fax phone number for the organization where this application or proceeding is assigned is 703-872-9306.

Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR. Status information for unpublished applications is available through Private PAIR only. For more information about the PAIR system, see <http://pair-direct.uspto.gov>. Should you have questions on access to the Private PAIR system, contact the Electronic Business Center (EBC) at 866-217-9197 (toll-free).

Hau V Phan
Examiner
Art Unit 3618

Hau Phan

9/10/04

HAU PHAN
PATENT EXAMINER